

REMARKS

In response to the office action dated August 8, 2007, Applicant amended claims 1, 43, 52, 60, 64, 67, and 70-80. Claims 1-80 are presented for examination.

Initially, Applicant would like to thank the Examiner and her supervisor for the telephone interview with his counsels on January 29, 2008. During the interview, Applicant's counsels proposed to amend independent claims to recite a composition consisting essentially of one or two PHAs. The Examiners agreed that the proposed amendment would distinguish the claimed subject matter from that described in Hammond, U.S. Patent 5,646,217 ("Hammond") and that they would reconsider this application after the amendment is made. Details of the discussion during the interview are summarized below.

Claims 1-16, 20-36, 40-46, 48-55, 57-71, and 74-80 are rejected under 35 U.S.C. §102(b) as being anticipated by Hammond. Claims 37-39, 47, 56, 72, and 73 are rejected under 35 U.S.C. §103(a) as being obvious over Hammond.

Claims 1-16 and 20-80, as amended, require a composition consisting essentially of one or two PHAs, at least one of which contains at least about 65 wt% of a 3-hydroxybutyrate monomer or at least a 4-hydroxybutyrate monomer. According to MPEP 2111.03, "[t]he transitional phrase 'consisting essentially of' limits the scope of a claim to the specified materials or steps 'and those that do not materially affect the basic and novel characteristic(s)' of the claimed invention" (emphases original). In other words, claims 1-16 and 20-80 require a composition containing one or two PHAs but without any components that would materially affect the basic and novel characteristics of the composition.

Hammond describes polymer compositions containing a first PHA component, optionally a second PHA component, and an inorganic transesterification catalyst. *See*, e.g., the abstract. Hammond also teaches that

"transesterification catalysts used in such [polyester] blends increase compatibility and hence improve physical properties. Such catalysts may maintain or increase the molecular weight of polyester or blend of different polyester or to increase the resulting melt viscosity of blends of polyesters whose individual components have widely different melt viscosities." *See*, e.g., column 1, lines 12-18.

Thus, in view of Hammond, one skilled in the art could readily recognize that the transesterification catalyst described in Hammond materially affects the basic and novel characteristics (i.e., the compatibility and molecular weights of polyester components, and the melt viscosity of polyester blends). Hammond does not disclose or suggest a composition containing one or two PHAs but without any components that would materially affect the basic and novel characteristics of the composition, as required by amended claims 1-16 and 20-80. Thus, claims 1-16 and 20-80 are not anticipated or rendered obvious by Hammond. Accordingly, Applicant requests reconsideration and withdrawal of these two rejections.

Claims 17-19 are rejected under 35 U.S.C. §103(a) as being obvious over Hammond in view of Proctor & Gamble, WO 97/04036 ("P&G").

Claims 17-19 depend from claim 1, which is discussed above. Neither Hammond nor P&G, alone or in combination, discloses or suggests the compositions required by claims 17-19. There is no suggestion to combine these two references to provide such compositions. Even if these two references were combined, the result would not be the compositions required by claims 17-19. Accordingly, Applicant requests reconsideration and withdrawal of this rejection.

The Examiner rejected claims 1-80 under the judicially created doctrine of obviousness-type double patenting on the ground that they are unpatentable over certain claims of five commonly owned U.S. patents and patent applications in view of Hammond. Applicant requests that these rejections be held in abeyance until the pending claims are otherwise in condition for allowance.

The Petition for Extension of Time fee in the amount of \$1,050 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization.

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Respectfully submitted,

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